United Nations

Report of the Committee against Torture

General Assembly

Official Records • Forty-ninth Session
Supplement No.44 (A/49/44)

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 28 April 1994, the closing date of the twelfth session of the Committee against Torture, there were 81 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and opened for signature and ratification in New York on 4 February 1985. It entered into force on 26 June 1987 in accordance with the provisions of its article 27. A list of States which have signed, ratified or acceded to the Convention together with an indication of those that have made declarations under articles 21 and 22 of the Convention is contained in annex I to the present report.

2. The text of the declarations, reservations or objections made by States parties with respect to the Convention are reproduced in document CAT/C/2/Rev.3.

B. Opening and duration of the sessions

3. The Committee against Torture has held two sessions since the adoption of its last annual report. The eleventh and twelfth sessions of the Committee were held at the United Nations Office at Geneva from 8 to 19 November 1993 and from 18 to 28 April 1994.

4. At its eleventh session the Committee held 19 meetings (154th to 172nd meeting) and at its twelfth session the Committee held 17 meetings (173rd to 189th meeting). An account of the deliberations of the Committee at its eleventh and twelfth sessions is contained in the relevant summary records (CAT/C/SR.154-189).

C. Membership and attendance

5. In accordance with article 17 of the Convention, the Fourth Meeting of the States parties to the Convention was convened by the Secretary-General at the United Nations Office at Geneva, on 24 November 1993. The following five members of the Committee were elected for a term of four years beginning on 1 January 1994: Mr. Alexis Dipanda Mouelle, Mrs. Julia Iliopoulos-Strangas, Mr. Mukunda Regmi, Mr. Bent Sørensen and Mr. Alexander M. Yakovlev. The list of the members, together with an indication of the duration of their term of office, appears in annex II to the present report.

6. All the members attended the eleventh session of the Committee, except Mr. Gil Lavedra. The twelfth session of the Committee was attended by all the members, except Mr. Yakovlev. Mr. El Ibrashi and Mr. Gil Lavedra attended the first week of the session only.

D. Solemn declaration by the newly elected members of the Committee

7. At the 173rd meeting, on 18 April 1994, the five members of the Committee who had been elected at the Fourth Meeting of the States parties to the Convention made the solemn declaration upon assuming their duties, in accordance with rule 14 of the rules of procedure.

E. Election of officers

8. At the 173rd meeting, on 18 April 1994, the Committee elected the following officers for a term of two years in accordance with article 18, paragraph 1, of the Convention and rules 15 and 16 of the rules of procedure:

Chairman: Mr. Alexis Dipanda Mouelle

Vice-Chairmen: Mr. Peter Thomas Burns
Mr. Fawzi El Ibrashi
Mr. Hugo Lorenzo

Rapporteur: Mr. Bent Sørensen

F. Agendas

9. At its 154th meeting, on 8 November 1993, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/23), as the agenda of its eleventh session:

1. Adoption of the agenda.

2. Organizational and other matters.

3. Submission of reports by States parties under article 19 of the Convention.

4. Consideration of reports submitted by States parties under article 19 of the Convention.

5. Consideration of information received under article 20 of the Convention.

6. Consideration of communications under article 22 of the Convention.

7. World Conference on Human Rights.

10. At its 173rd meeting, on 18 April 1994, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/26), as the agenda of its twelfth session:

1. Opening of the session by the representative of the Secretary-General.

2. Solemn declaration by the newly elected members of the Committee.

3. Election of the officers of the Committee.

4. Adoption of the agenda.

5. Organizational and other matters.

6. Submission of reports by States parties under article 19 of the Convention.

7. Consideration of reports submitted by States parties under article 19 of the Convention.

8. Consideration of information received under article 20 of the Convention.

9. Consideration of communications under article 22 of the Convention.

10. Action by the General Assembly at its forty-eighth session:

    (a) Annual report submitted by the Committee against Torture under article 24 of the Convention;

    (b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights;

    (c) World Conference on Human Rights.

11. Annual report of the Committee on its activities.

G. Working methods of the Committee

Eleventh session

11. In connection with this question, the Committee had before it an informal note by the Secretariat providing information on the working methods of other human rights treaty bodies.

12. At its 156th meeting, on 9 November 1993, the Committee exchanged views on possible ways to make its methods of work more effective. In view of forthcoming changes in the Committee's membership, the Committee agreed to leave any final decisions concerning its methods of work to the following session. However, the Committee felt that it could take immediately decisions to change the presentation of its annual reports to the General Assembly, particularly with regard to the sections containing summaries of the consideration of reports submitted by States parties, which were based on the records of the meetings at which those reports were considered.

13. At its 166th meeting, on 16 November 1993, the Committee decided that it would no longer require the preparation of summaries of the consideration of State party reports. The relevant sections of the annual report would be confined to the full text of the Committee's conclusions and recommendations and refer to the relevant summary records for details of the discussion.

Twelfth session

14. The Committee resumed the discussion on its working methods in a private meeting. It had before it a revised version of the informal note by the Secretariat providing updated information on the working methods of other human rights treaty bodies. The Committee decided to continue its practice of elaborating and adopting conclusions and recommendations immediately after the consideration of each report submitted by a State party. The conclusions and recommendations would be structured along the following lines: (a) introduction; (b) positive aspects; (c) factors and difficulties impeding the application of the provisions of the Convention; (d) subjects of concern; and (e) recommendations.

H. Question of a draft optional protocol to the Convention

15. At the 156th meeting, on 9 November 1993, Mr. Sørensen, who had been designated by the Committee as its observer in the inter-sessional open-ended working group of the Commission on Human Rights elaborating the protocol, informed the Committee on the progress made by the working group at its second session held at the United Nations Office at Geneva from 25 October to 5 November 1993.

I. Cooperation and coordination of activities between the Committee and the Special Rapporteur of the Commission on Human Rights on questions relating to torture

16. The Committee exchanged views on this issue with Mr. Nigel Rodley, Special Rapporteur of the Commission on Human Rights on questions relating to torture, at its 187th meeting, on 27 April 1994. Both the Committee and the Special Rapporteur stressed that their mandates were different, but complementary to achieve the common goal of reducing and eventually eradicating the plague of torture in the world. They were of the view that the existing coordination of their respective areas of work made it possible to avoid any overlap in their activities and that exchanges of views and information should continue on a regular basis.

II. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-EIGHTH SESSION

17. The Committee considered this agenda item at its 176th, 185th and 187th meetings, held on 19, 26 and 27 April 1994.

A. Annual report submitted by the Committee against Torture under article 24 of the Convention

18. The Committee was informed that by decision 48/430 of 20 December 1993, the General Assembly had taken note of the annual report of the Committee.

B. Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

Eleventh session

19. In accordance with the relevant decisions adopted by the Committee at its sixth session, at the 166th meeting, on 16 November 1993, Mr. El Ibrashi reported on the activities of the Human Rights Committee.

Twelfth session

20. In connection with this sub-item, the Committee had before it General Assembly resolution 48/120 of 20 December 1993 and Commission on Human Rights resolution 1994/19 of 24 February 1994.

21. The Committed agreed that Mr. Burns, Mr. Dipanda Mouelle, Mr. El Ibrashi and Mr. Sørensen continue to follow, respectively, the activities of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee on the Rights of the Child. The Committee also designated Mrs. Iliopoulos-Strangas and Mr. Regmi to follow, respectively, the activities of the Committee on the Elimination of Discrimination against Women and the Group of Three established under the International Convention on the Suppression and Punishment of the Crime of Apartheid.

22. At the 185th meeting on 26 April 1994, Mr. Sørensen reported on the activities of the Committee on the Rights of the Child.

C. World Conference on Human Rights

Eleventh session

23. At the 170th meeting, on 18 November 1993, Mr. Sørensen, who had represented the Committee at the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, as well as at the four sessions of its Preparatory Committee, informed the Committee on the outcome of the Conference.

Twelfth session

24. In connection with this sub-item, the Committed had before it General Assembly resolution 48/121 of 20 December 1993 and the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights. 1/

25. In addition, the Committee took note with appreciation of the letter addressed to it by the Assistant Secretary-General for Human Rights inviting the Committee to express its views and give its suggestions on how to ensure effective promotion and protection of human rights education, training and public information, in the light of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights.

26. In its reply, the Committee, in particular, referred to the relevant provisions of article 10 of the Convention and to the legal obligation for States parties to the Convention to ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military; medical personnel; public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

III. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Action taken by the Committee to ensure the submission of reports

Eleventh session

27. The Committee, at its 154th meeting, held on 8 November 1993, considered the status of submission of reports under article 19 of the Convention. The Committee had before it the following documents:

(a) Notes by the Secretary-General concerning initial reports of States parties which were due from 1988 to 1993 (CAT/C/5, 7, 9, 12, 16/Rev.1 and 21/Rev.1);

(b) Notes by the Secretary-General concerning second periodic reports which were due in 1992 and 1993 (CAT/C/17 and 20/Rev.1).

28. The Committee was informed that, in addition to the eight reports that were scheduled for consideration by the Committee at its eleventh session (see chap. IV, para. 45), the Secretary-General had received the initial report of Nepal (CAT/C/16/Add.3), the second periodic report of Switzerland (CAT/C/17/Add.12), and additional information from the United Kingdom of Great Britain and Northern Ireland concerning its dependent territories (CAT/C/9/Add.14). In accordance with rule 65 of the Committee's rules of procedure and its decisions, the Secretary-General continued sending reminders automatically to those States parties whose initial reports were more than 12 months overdue, and subsequent reminders every six months. In the case of reports which were more than three years overdue, the Chairman of the Committee, at its request, discussed the question of reporting obligations with the representatives of the States parties concerned or addressed a letter on the subject to the Minister for Foreign Affairs, as appropriate. Those States were Brazil and Guinea, whose initial reports were due in 1990 but had not yet been received after three and four reminders, respectively.

29. In addition, a second reminder was sent by the Secretary-General in August 1993 to Malta whose initial report was due in 1991 but had not yet been received, and a first reminder was sent in September 1993 to Venezuela, whose initial report was due in 1992 but had not yet been received.

30. With regard to States parties whose initial reports were more than four or five years overdue, namely Togo and Uganda, whose initial reports were due in 1988 and Guyana, whose initial report was due in 1989, the Committee deplored that, in spite of seven reminders to Togo and Uganda and six to Guyana, including a letter from its Chairman to their respective Ministers for Foreign Affairs, those States parties continued not to comply with the obligations they had freely assumed under the Convention. The Committee stressed that it had the duty to monitor the Convention and that the non-compliance of a State party with its reporting obligations constituted an infringement of the provisions of the Convention.

31. In this connection, the Committee agreed that, with regard to reports overdue for five years or more, it might decide to consider the implementation of the Convention in the States parties concerned in the absence of their reports and to invite their representatives to participate in the relevant meetings.

32. With regard to second periodic reports, the Committee was informed that, in July 1993, the Secretary-General had sent first reminders to Afghanistan, Austria, Belize, Bulgaria, Cameroon, Denmark, France, Luxembourg, the Philippines, the Russian Federation, Senegal and Uruguay, whose reports were due in 1992 but had not yet been received.

Twelfth session

33. At its 176th, 179th and 185th meetings held on 19, 21 and 26 April 1994, the Committee also considered the status of submission of reports under article 19 of the Convention. In addition to the documents listed in paragraph 27 above, the Committee had before it two notes by the Secretary-General: one concerning initial reports to be submitted by States parties in 1994 (CAT/C/24); and the other concerning second periodic reports to be submitted by States parties in 1994 (CAT/C/25).

34. The Committee was informed that, in addition to the four reports that were scheduled for consideration by the Committee at its twelfth session (see chap. IV, para. 47), the Secretary-General had received the initial reports of the Czech Republic (CAT/C/21/Add.2), Monaco (CAT/C/21/Add.1), the new text of the initial report of Peru (CAT/C/7/Add.16) replacing the one reproduced in document CAT/C/7/Add.15, and the second periodic reports of Chile (CAT/C/20/Add.3) and the Netherlands (CAT/C/25/Add.1). The revised version of the initial report of Belize requested for 10 March 1994 by the Committee at its eleventh session (see chap. IV, para. 46) had not yet been received.

35. The Committee was also informed that, in spite of an eighth reminder sent by the Secretary-General in February 1994, the initial reports of Togo and Uganda, which were due in 1988, had not yet been received. Similarly, the initial report of Guyana which was due in 1989 had not yet been received after six reminders. In accordance with the relevant decisions of the Committee, Togo, Uganda and Guyana had been requested to submit their initial and second periodic reports in one document.

36. In response to the latest reminder, the Government of Uganda, by a note verbale dated 15 February 1994, had stated that it would appreciate receiving the advisory services and technical assistance of the Centre for Human Rights in preparing the reports as soon as it would get details about the form of assistance and what the Government was expected to do.

37. The Committee discussed the request made by the Government of Uganda with a representative of the Technical Cooperation and Information Branch of the Centre for Human Rights. The Committee recommended that Government officials responsible for the preparation of reports in Uganda be invited to attend the international course specifically aimed at training government officials in the reporting obligation system to be held at the International Training Centre of the International Labour Organization at Turin, Italy, in November 1994, within the framework of the Fellowship Programme of the Centre for Human Rights. In view of the long delay in the submission of reports by Uganda, the Committee also recommended that a programme of technical assistance specifically addressed to that State party for the preparation of reports under the Convention be suggested at a later stage to the Government of Uganda and submitted for approval to the Board of Trustees of the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights. The proposed programme would focus on a one-week visit to Uganda of a member of the Committee against Torture accompanied by staff members of the Centre for Human Rights who would

train government officials responsible for the preparation of reports and would explain what measures are required to fully implement the Convention.

38. In addition, the Committee was informed that, in December 1993, the Secretary-General had sent a fourth reminder to Guatemala and Somalia and, in February 1994, a third reminder to Malta, whose initial reports were due in 1991. Furthermore, first reminders were sent in February 1994 to Croatia, Estonia, Jordan, Yemen and Yugoslavia and a second reminder to Venezuela in April 1994, whose initial reports were due in 1992.

39. In its reply to the reminder, dated 23 March 1994, the Government of Croatia requested, through the Centre for Human Rights, advisory services and technical assistance in the field of human rights, particularly in the preparation of reports and better compliance with the reporting obligations. The Committee discussed that request also with a representative of the Technical Co-operation and Information Branch of the Centre for Human Rights. It recommended that government officials responsible for the preparation of reports in Croatia also be invited to attend the training course at Turin in November 1994, within the framework of the Fellowship Programme of the Centre for Human Rights.

40. With regard to second periodic reports, the Secretary-General, in February 1994, sent second reminders to Afghanistan, Austria, Bulgaria, Cameroon, Denmark, France, Luxembourg, the Philippines, the Russian Federation, Senegal and Uruguay, whose reports were due in 1992, and a first reminder to Colombia, whose report was due in 1993.

41. The Committee again requested the Secretary-General to continue sending reminders automatically to those States parties whose initial reports were more than 12 months overdue and subsequent reminders every 6 months.

42. In accordance with the decision adopted by the Committee at its seventh session, the Chairman, at the Committee's request, discussed with the representative of Guatemala, whose report was more than three years overdue, the difficulties that prevented that State party from complying with its reporting obligations under the Convention.

43. Finally, the Committee, noting that no reply had been received to the many reminders addressed to Guyana and Togo with regard to their reports, overdue for five years or more, once again strongly deplored the attitude of those States parties which persisted in not complying with the obligations they had freely assumed under the Convention.

44. The status of submission of reports by States parties under article 19 of the Convention as at 28 April 1994, the closing date of the twelfth session of the Committee, appears in annex III to the present report.

IV. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

45. At its eleventh and twelfth sessions, the Committee considered initial reports submitted by six States parties and second periodic reports submitted by four States parties, under article 19, paragraph 1, of the Convention. At its eleventh session, the Committee devoted 13 of the 19 meetings held to the consideration of reports (see CAT/C/SR.158, 159 and Add.1, 160-162, 163/Add.1, 164-170). The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its eleventh session:

Belize (initial report) CAT/C/5/Add.25
Peru (initial report) CAT/C/7/Add.15
Paraguay (initial report) CAT/C/12/Add.3
Poland (initial report) CAT/C/9/Add.13
Egypt (second periodic report) CAT/C/17/Add.11
Ecuador (second periodic report) CAT/C/20/Add.1
Portugal (initial report) CAT/C/9/Add.15
Cyprus (initial report) CAT/C/16/Add.2

46. At its 156th meeting, on 9 November 1993, the Committee, after a preliminary dialogue with the representative of Belize, decided to request the Government of this State party to submit a revised version of its initial report together with its second periodic report in a single document. The Committee also agreed, at the request of the Government concerned, to postpone the consideration of the initial report of Peru. The Government of Peru wished to submit a new version of the report.

47. At its twelfth session, the Committee devoted 8 of the 17 meetings held to the consideration of reports submitted by States parties (see CAT/C/SR.177, 178 and Add.2, 179-184). The following reports listed in the order in which they had been received by the Secretary-General, were before the Committee at its twelfth session:

Switzerland (second periodic report) CAT/C/17/Add.12
Nepal (initial report) CAT/C/16/Add.3
Greece (second periodic report) CAT/C/20/Add.2
Israel (initial report) CAT/C/16/Add.4

48. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee when their reports were examined. All of the States parties whose reports were considered by the Committee sent representatives to participate in the examination of their respective reports.

49. In accordance with the decision taken by the Committee at its fourth session, 2/ country rapporteurs and alternate rapporteurs were designated by the Chairman, in consultation with the members of the Committee and the Secretariat, for each of the reports submitted by States parties and considered by the Committee at its eleventh and twelfth sessions. The list of the above-mentioned reports and the names of the country rapporteurs and their alternates for each of them appear in annex IV to the present report.

50. In connection with its consideration of reports, the Committee also had before it the following documents:

(a) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and reservations and declarations under the Convention (CAT/C/2/Rev.3);

(b) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19 of the Convention (CAT/C/4/Rev.2);

(c) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14).

51. In accordance with the decision taken by the Committee at its eleventh session, (see para. 13 above) the following sections arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain references to the reports submitted by the States parties and to the summary records of the meetings of the Committee at which the reports were considered, as well as the text of conclusions and recommendations adopted by the Committee with respect to the States parties' reports considered at its eleventh and twelfth sessions.

Paraguay

52. The Committee considered the initial report of Paraguay (CAT/C/12/Add.3) at its 158th, 159th and 161st meetings, held on 10 and 11 November 1993 (see CAT/C/SR.158, 159 and 161), and adopted the following conclusions and recommendations:

A. Introduction

53. The Committee thanks the State party for its report and for its cooperation in the constructive dialogue with the Committee; it takes note of the information submitted in the report and presented orally by the representative of Paraguay.

54. Paraguay has complied with its obligation to submit an initial report under article 19 of the Convention, and its second periodic report is due on 10 April 1995.

B. Positive aspects

55. The Committee regards as very positive the fact that Paraguay now has a democratic Government and that its authorities have expressed the firm determination to promote and protect human rights and, in particular, to bring about the total and effective eradication of torture and other similar treatment. It also regards as a positive step the adoption in 1992 of a new democratic Constitution that firmly enshrines fundamental human rights and expressly prohibits torture.

56. It is also encouraging that judicial proceedings are now under way to investigate grave violations of human rights, especially torture and political murders committed under the previous regime.

C. Subjects of concern

57. However, the Committee is concerned, firstly, that the practice of torture continues within the police, according to serious allegations received; the victims of this practice are said to be not only adults, but also minors.

58. The Committee is also concerned about the complex situation in the prisons, which do not appear to meet the minimum requirements in order to serve as re-education centres for offenders and not to become instruments of ill-treatment.

59. Another cause for concern is the continued lack of legal mechanisms to make clearer the prohibition of torture (which the Constitution has already established), to halt extended or incommunicado detention and, in general, to bring domestic law fully into line with the Convention. The Committee is also concerned about the absence, in practice, of a swift and firm reaction on the part of the courts to allegations of ill-treatment and torture.

60. Lastly, the Committee is concerned about the slow pace of judicial proceedings relating to violations of human rights committed under the previous regime and also about Paraguay's apparently inadequate system for the civil compensation and rehabilitation of victims.

D. Recommendations

61. The Committee believes that Paraguay could have a more complete mechanism for the eradication of torture if it recognized the competence of the Committee under articles 21 and 22 of the Convention.

62. The Committee hopes to receive in writing the replies that it did not obtain orally during those meetings and, in particular, comments on the information communicated to the Committee by two non-governmental organizations.

63. The Committee encourages the Government of Paraguay to finish making changes to its legislation and to bring it into line with the Convention, as well as to speed up investigations and judicial proceedings relating to torture and other similar treatment.

64. The Government might wish to request the technical assistance of the United Nations Centre for Human Rights.

65. A contribution by Paraguay to the United Nations Voluntary Fund for Victims of Torture would be a gesture reflecting that State's determination to promote human rights.

Poland

66. The Committee considered the initial report of Poland (CAT/C/9/Add.13) at its 160th and 161st meetings, held on 11 November 1993 (see CAT/C/SR.160 and 161), and adopted the following conclusions and recommendations:

A. Introduction

67. The Committee thanks Poland for its report, and is grateful to it for having begun a fruitful dialogue with the Committee through a highly qualified delegation.

68. Even though it is two and half years late, the report is in keeping with the requirements of the Convention and the Committee's general guidelines concerning the form and contents of initial reports.

B. Positive aspects

69. Poland is one of the first Eastern European countries to bring about broad and far-reaching reforms in all areas - political, economic, social and legislative. It has ratified the European Convention on Human Rights and the Convention against Torture without reservations, as well as other international human rights instruments.

70. The Committee notes with satisfaction the considerable progress made by the Government of Poland in combating the various forms of torture. The reform of prison legislation is of a high standard.

C. Subjects of concern

71. At the same time, the Committee notes with concern that the reforms of criminal legislation and criminal procedure are overdue and incomplete:

(a) The legislation contains no definition of torture;

(b) The Public Prosecutor has more powers than the courts;

(c) There are no special provisions for compensating victims of torture.

D. Recommendations

72. The Committee recommends that the Government of Poland should:

(a) Take the necessary steps to have the new draft Penal Code and Code of Criminal Procedure adopted, thus solving the specific problems brought about by torture;

(b) Guarantee and ensure adequate redress and compensation for victims of torture;

(c) Formulate a specific training programme on torture for civilian and military personnel, lawyers and the medical profession.

73. The Committee hopes to receive information from the State party on the questions raised by members of the Committee which have not been answered.

Egypt

74. The Committee considered the second periodic report of Egypt (CAT/C/17/Add.11) at its 162nd, 163rd and 170th meetings, held on 12 and 18 November 1993 (see CAT/C/SR.162, 163/Add.1 and 170), and adopted the following conclusions and recommendations:

A. Introduction

75. The Committee thanks Egypt for its report and the written replies to the questions raised by the members of the Committee during its consideration of the State party's initial report (CAT/C/5/Add.23).

76. It welcomes the willingness of the Government of Egypt to continue the dialogue with the Committee, as shown by the presence of a large, high-level delegation, which it thanks for the replies given to its questions.

77. It nevertheless deplores the fact that the report was not prepared in accordance with the Committee's general guidelines and that the information does not follow the sequence of articles 2 to 16 of the Convention. Although the report contains a wealth of information on legislation, with an accompanying annex in which the articles of the Convention are compared with some articles of the Constitution and those of other legislative provisions, it provides very little information on the application of the Convention in practice, even though the representative of the State gave other additional information in his oral introduction.

78. It also deplores the fact that the replies given by the Egyptian delegation were often more general than specific.

79. The Committee considers that it would have been particularly useful for additional information to have been made available, including statistics on investigations into allegations of torture, legal proceedings and sentences handed down against persons responsible for acts of torture and ill-treatment.

80. The Committee thanks the State party for the core document (HRI/CORE/1/Add.19), which was prepared in accordance with the consolidated guidelines for the initial part of reports of States parties to be submitted under the various international human rights instruments.

81. The Committee regrets that some documents and information on statistical data needed for a practical understanding of the report were not annexed to the report at the time of its submission and were not distributed to the members of the Committee until during the 162nd meeting.

B. Positive aspects

82. The Committee notes with satisfaction that the renewed dialogue with the State party has enabled it to assess the extent to which domestic legislation is in keeping with the provisions of the Convention, as well as the factors and difficulties impeding their application.

83. It also notes that, in general, the legal situation is satisfactory, in so far as litigants and the Egyptian people seem to have confidence in the ordinary law courts.

84. It welcomes the fact that non-governmental organizations active in the field of human rights have the opportunity to express themselves freely and to visit certain places of detention.

C. Factors and difficulties impeding the application of the provisions of the Convention

85. The Committee notes that the state of emergency proclaimed in Egypt without interruption since 1981 is one of the main obstacles to the full application of the provisions of the Convention.

D. Subjects of concern

86. In the light of a good deal of concordant and specific information received from a number of reliable non-governmental organizations and from the Special Rapporteur of the United Nations Commission on Human Rights to examine questions relevant to torture, the Committee is concerned about the fact that torture is apparently still widespread in Egypt.

87. The Committee is also concerned about shortcomings in suitable preventive measures to combat torture, including the length and conditions of police custody and administrative detention and the slow pace of trials of persons responsible for acts of torture or ill-treatment.

88. It is also concerned about the existence in Egypt of many special courts, such as the military courts whose functioning would suggest that they are subordinate to the head of the executive branch, since some provisions of the Act on the State of Emergency authorize the President of the Republic to refer cases to the State security courts and to approve the decisions handed down.

89. Aware that, in recent years, terrorism has created a disturbing and alarming situation in Egypt and mindful of the fact that it is the Government's responsibility to combat terrorism in order to maintain law and order, the Committee nevertheless notes that the different measures taken or to be taken for that purpose must never result in non-compliance with the Convention by the State party or in any case justify torture. It should be recalled in that respect that, under article 2 of the Convention, no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political stability, an order from an superior officer or a public authority or any other public emergency, may be invoked as a justification of torture.

E. Recommendations

90. The Committee suggests that the State party should provide in its penal legislation for all forms of torture, fully incorporating all elements of the definition contained in article 1 of the Convention.

91. The Committee also suggests that the State party should include in its next periodic report, which is due in 1996, all the details and information relating to the many questions and inquiries which were not answered during the discussion.

92. The Committee also suggests that the State party should establish machinery for a systematic review of interrogation rules, methods and practices,

particularly in police premises, in order to honour its commitments under article 11 of the Convention.

93. It recommends that the Government of Egypt should continue its efforts to introduce other reforms to penal legislation, particularly with regard to the reduction of the excessive powers granted to the executive by certain legislative provisions and the length and conditions of police custody and administrative detention.

94. The Committee recommends that, while paying particular attention to the protection of the rights of persons arrested and detained, the State party should intensify the educational, training and information programmes provided for in article 10 of the Convention, for all the officials concerned.

95. The Committee recommends that the Egyptian authorities should undertake and expedite serious investigations into the conduct of the police forces in order to establish the truth of the many allegations of acts of torture and, if the results of the investigations are positive, bring the persons responsible before the courts and issue and transmit to the police specific and clear instructions designed to prohibit any act of torture.

96. The Committee, which appreciates the ratification by Egypt of most human rights Covenants and Conventions, hopes that the Egyptian Government will respond favourably to these suggestions and recommendations and that it will spare no effort to put them into practice.

Ecuador

97. The Committee against Torture considered the periodic report of Ecuador (CAT/C/20/Add.1) at its 164th and 165th meetings, held on 15 November 1993 (see CAT/C/SR.164 and 165), and adopted the following conclusions and recommendations:

A. Introduction

98. The Committee thanks the State party for its report and its sincere cooperation in the constructive dialogue with the Committee. It takes note of the information submitted in the report and in the oral presentation by the delegation of Ecuador.

99. Ecuador has fulfilled its obligation to submit a periodic report under article 19 of the Convention. Its next report is due on 28 April 1997.

B. Positive aspects

100. The Committee appreciates the firm commitment of the Government of Ecuador to the promotion and protection of human rights and in particular its efforts to eradicate all forms of torture.

101. It also appreciates the efforts made by Ecuador to modernize its legislation (Constitution, Penal Code, Code of Penal Procedure, and Act on the Attorney-General's Office) and to establish a Judicial Police, which will be the only public body responsible to criminal investigation, under the direct supervision of independent magistrates.

C. Subjects of concern

102. The Committee is nevertheless concerned by the many allegations received from various non-governmental organizations regarding torture, which is reportedly practised in a number of places of detention and prisons, particularly in the premises of the Crime Investigation Office.

103. The Committee is also by the fact that no action has been taken on several of the recommendations it made to Ecuador in 1991, in particular those aimed at bringing all custodial measures (arrest warrants, habeas corpus) under the direct responsibility of independent members of the judiciary. In general, the Committee is concerned by the limitations that appear to be placed on the powers of the courts in Ecuador and by the existence of officials referred to as "judges" who are empowered to try cases without belonging to the judiciary and who consequently do not provide safeguards of independence.

D. Recommendations

104. The Committee recommends that Ecuador should take fundamental and urgent steps for the complete eradication of torture and other similar treatment. To that end, the Government should ensure that all forms of torture as defined in article 1 of the Convention are offences under criminal law.

105. The Committee also encourages Ecuador to implement, within a reasonable period the legislative reforms undertaken to place the criminal justice system (from the investigation of offences to the serving of sentences) under the direct supervision of independent members of the judiciary and ensure that they can quickly investigate reported or suspected cases of torture or ill-treatment.

Portugal

106. The Committee considered the initial report of Portugal (CAT/C/9/Add.15) at its 166th and 167th meetings, held on 16 November 1993 (see CAT/C/SR.166 and 167), and adopted the following conclusions and recommendations:

A. Introduction

107. The Committee notes with satisfaction that the report of Portugal is in conformity with its general guidelines on the presentation of the initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention.

108. It listened with interest to the oral statement and explanations and clarifications of the Portuguese delegation. It greatly appreciated the spirit of trust and fruitful cooperation that characterized the dialogue with the delegation.

109. However, the Committee noted with regret that the report had been submitted more than three years late, contrary to the provisions of article 19, paragraph 1, which stipulates that States parties should submit initial reports within one year after the entry into force of the Convention for the State party concerned.

B. Positive aspects

110. The Committee expresses its appreciation for the efforts made by the State party in the constitutional and legislative fields to ensure that its legal system is in conformity with the Convention. Those efforts seem to be the expression of a genuine desire to create the conditions necessary to protect the physical and moral integrity of individuals and to prevent the practice of torture and cruel, inhuman or degrading treatment.

111. The Committee particularly appreciates the fact that the Constitution of Portugal:

(a) States that duly ratified international conventions are directly applicable and directly binding on all public and private bodies;

(b) Affirms the joint liability of the State, its public bodies and officials in civil matters;

(c) Declares evidence obtained under torture to be invalid, as well as clearly proclaiming that the right to physical integrity cannot be called in question when the country is under a state of siege or a state of emergency.

112. The Committee considers as positive the objectives of the institutions set up to protect and promote human rights, and the broad teaching, training and information programme being carried out to that end.

C. Subjects of concern

113. The Committee against Torture notes with regret that, despite those efforts:

(a) Ill-treatment and occasionally acts qualified as torture continue in police stations and other places of detention throughout the country;

(b) Investigations into such allegations are often embarked upon rather late and last too long and offenders are not always brought to court. That situation, together with the lightness of the sentences imposed, creates an impression that the culprits act with relative impunity - an impression highly prejudicial to the implementation of the provisions of the Convention.

114. The Committee also considers that the duration of pre-trial detention, both in law and in practice, is a negative factor.

115. Moreover, it regrets the treatment of the territory of Macao, under Portuguese administration until December 1999, owing to the non-application of the Convention against Torture to that territory.

D. Recommendations

116. In conclusion, the Committee recommends:

(a) That the next periodic report of the State party should be submitted within the time-limit laid down in the Convention;

(b) That the State party should continue its efforts, particularly with respect to the reform of the Penal Code and the Code of Criminal Procedure, to ensure that its legislation is fully in conformity with the provisions of the Convention;

(c) That it should establish machinery for the systematic review of interrogation rules, instructions, methods and practices, particularly at police stations, as stipulated in article 11 of the Convention, and ensure that such machinery is sufficiently effective, as required by article 2, to give full effect to the commitments assumed and to implement the provisions of the Convention.

(d) That it should extend the application of the Convention to Macao, in accordance with article 2, paragraph 1, of the Convention.

117. The Committee against Torture takes note of the undertakings given by the Portuguese delegation and is convinced that Portugal will spare no effort to implement these recommendations.

Cyprus

118. The Committee considered the initial report of Cyprus (CAT/C/9/Add.15) at its 168th and 169th meetings, held on 17 November 1993 (see CAT/C/SR.168 and 169), and adopted the following conclusions and recommendations:

A. Introduction

119. The report was due on 16 August 1992 and was received on 23 June 1993. In all respects the report meets the guidelines of the Committee and the Committee compliments Cyprus on the comprehensive and detailed information provided.

B. Positive aspects

120. The Committee feels that Cyprus has a very advanced legislative and administrative scheme for the implementation of human rights values contained in international instruments.

121. In this regard the Committee notes with satisfaction the proposed amendment to the Ombudsman's jurisdiction granting him clear authority to investigate and report on human rights violations.

122. Legal protection of basic rights is also apparent in the constitutional provisions of Cyprus.

C. Factors and difficulties affecting the implementation of the Convention

123. There seem to be no structural or legal impediments to full implementation of the Convention. On the contrary, the legal, legislative, and administrative framework is most comprehensive and probably as good as the most advanced anywhere.

D. Subjects of concern

124. Casual brutality by police officers has been reported, particularly at Limassol Police Station.

125. This may reveal a lack of professionalism which if not dealt with strictly could, in a small country with a fairly homogeneous culture, take a firm hold on police practices.

126. The Committee notes though, the response of the authorities in prosecuting two officers on charges of torture and the decision of President Clerides to ask the Council of Ministers to set up a Commission of Inquiry into the reported draft conclusions of the European Committee for the Prevention of Torture. The Committee notes also that this Commission of Inquiry has been set up and is engaged in its inquiries.

E. Recommendations

127. The legal and administrative constructs in Cyprus need no changes. But recommendations can be made:

(a) When complaints committees are set up to examine questions of police brutality that may contravene the Convention against Torture a great effort should be made to ensure that their composition cannot be criticized on the basis of real or perceived partiality;

(b) It is sometimes very difficult for small, homogeneous States to change institutional attitudes and practices without creating the risk of a strong reaction. Very often it is useful to utilize an external agency for this catalytic role. Quite obviously, not only do the police need to be disciplined and prosecuted for any unlawful conduct, but a real attempt must be made to properly internalize their attitudes towards the human rights values that they must respect in their everyday activities. In this regard, as well as with respect to the emphasis in their police training, the programme of advisory services and technical assistance of the Centre for Human Rights is ready to assist in the educational and re-educational mission. A joint initiative between that programme and the Government of Cyprus, with appropriate attendant publicity, may go some way towards affecting police attitudes;

(c) The requirement of reciprocity in Conventions, even in the limited sense that the representative of Cyprus offered in his answer to the Committee, is somewhat cryptic; this could be re-examined and clarified in the periodic report;

(d) The Committee also likes to receive answers to its unanswered questions;

(e) The Committee wishes to express its appreciation to Cyprus for its comprehensive report and its obvious willingness to deal with the questions raised by the members of the Committee.

Switzerland

128. The Committee against Torture considered Switzerland's second periodic report (CAT/C/17/Add.12) at its 177th and 178th meetings, held on 20 April 1994

(see CAT/C/SR.177 and 178 and Add.2), and adopted the following conclusions and recommendations:

A. Introduction

129. The Committee against Torture thanks the Government of Switzerland for its second periodic report. It also listened with interest to the oral report and clarifications presented by the Swiss delegation. The Committee wishes to thank the delegation for its replies and for the spirit of open-minded cooperation in which the dialogue was conducted. It considers the report to be in conformity with the Committee's guidelines regarding periodic reports.

B. Positive aspects

130. The Committee appreciates the renewed determination of the Swiss Government to guarantee respect for, and the protection of, human rights through its accession to a number of international and regional instruments for the promotion of such rights and its intention to support the adoption of the draft optional protocol to the Convention against Torture.

131. The Committee notes with satisfaction and sets special store by the fact that no governmental or non-governmental body has affirmed the existence of cases of torture within the meaning of article 1 of the Convention.

C. Subjects of concern

132. However, the Committee, which has heard of cases of ill-treatment suffered by persons arrested by the police, considers that reform of the legislation and practice relating to police custody and pre-trial detention is desirable, particularly the right to get in touch with one's family, immediate access to a lawyer and the right to a medical examination by a doctor of the detained person's choice or drawn from a list of doctors compiled by the Medical Association.

133. The Committee is also concerned about the system of holding persons incommunicado during pre-trial detention and the problem of solitary confinement of prisoners for long periods, which may constitute inhuman treatment.

134. The Committee, while welcoming the delegation's assurances that the Federal Court views the right of non-return as a basic right, none the less fears that certain provisions of the legislation on the right to asylum may authorize return and extradition to States in which the applicant is genuinely at risk of being subjected to torture, in violation of article 3 of the Convention.

D. Recommendations

135. The Committee considers it essential that any asylum-seeker whose case is being considered with a view to return or regularization of his situation should be treated with due consideration for his dignity and should be protected against any measure that deprives him of his liberty.

136. The Committee takes note of the delegation's promise to furnish missing information in writing within six months, in particular certain statistics.

137. The Committee is convinced that the State party will make every effort to introduce the suggested legislative and administrative improvements with a view to ensuring even more satisfactory compliance with the standards laid down by the Convention.

Nepal

138. The Committee considered the initial report of Nepal (CAT/C/16/Add.3) at its 179th and 180th meetings, on 21 April 1994 (see CAT/C/SR.179 and 180), and adopted the following conclusions and recommendations:

A. Introduction

139. The Committee commends the Kingdom of Nepal for its timely report. The report was scant on detail and did not follow the guidelines of the Committee (CAT/C/4/Rev.2). It was, however, supplemented by additional information provided during the oral introduction.

B. Positive aspects

140. Nepal is taking positive steps to meet its obligations under the Convention and has in place the democratic institutions necessary to do so. This is all the more impressive in the light of the lack of economic resources that the country has.

141. The Committee notes that Nepal is currently considering legislation incorporating a crime of torture into its domestic law and is also enacting a compensation scheme.

C. Subjects of concern

142. The Committee is concerned that the proposed definition of torture is not as wide as that required by article 1 of the Convention.

143. The Committee is also concerned that the capacity to collect the data necessary to carry out its reporting functions under Article 19 of the Convention may also be lacking.

144. The Committee is also concerned to note that several cases of police maltreatment of prisoners and asylum-seekers have been reported by non-governmental organizations and the Special Rapporteur of the Commission on Human Rights on questions relating to torture, but no evidence has been produced of criminal prosecution of such officers.

D. Recommendations

145. The Committee recommends that an additional report setting out in full answers to the questions raised by the Committee, and any other pertinent information to be prepared by Nepal be forwarded to the Committee within 12 months. Such additional report is to follow the guidelines laid down by the Committee.

146. The Committee encourages Nepal to enact legislation incorporating the definition of torture as contained in the Convention as soon as possible, together with ancillary compensation legislation.

147. The Committee also recommends that a vigorous programme of education be undertaken with police officers and border guards, so that they may more readily understand their obligations as agents of the State pursuant to the Convention.

Greece

148. The Committee considered the second periodic report of Greece (CAT/C/20/Add.2) at its 181st and 182nd meetings, held on 22 April 1994 (CAT/C/SR.181 and 182) and has adopted the following conclusions and recommendations:

A. Introduction

149. The Committee thanks the State party for its report and for its continuing cooperation in the constructive dialogue with the Committee. It takes note of the information submitted in the report as well as the oral presentation of the delegation of Greece.

150. Greece has complied with its obligation to submit an initial report and a second periodic report under article 19 of the Convention.

151. The Committee wishes to express its appreciation to Greece for its obvious willingness to deal with the various issues raised by the Committee.

B. Positive aspects

152. The Committee feels that Greece has a very advanced legislative and administrative scheme for the implementation of human rights values contained in the international instruments.

153. The Committee also regards as very positive the fact that the Government of Greece has continued to take practical measures to promote and protect human rights and in particular to bring about the total and effective eradication of torture and other similar treatment.

154. It is also encouraging that judicial and administrative proceedings have been undertaken to investigate violations of human rights, especially torture.

C. Subject of concern

155. However, the Committee is concerned at the practice of severe ill-treatment which seems to be an ongoing problem occurring in some police stations.

D. Recommendations

156. The Committee recommends that the advanced legislation in Greece for preventing the ill-treatment of accused persons be fully applied in practice.

157. The Committee also recommends that more attention be given to adequate training on the prohibition of torture to medical personnel.

158. In addition, the Committee expects to receive answers to the various questions addressed to the Greek delegation, especially those concerning refugees.

Israel

159. The Committee considered the initial report of Israel (CAT/C/16/Add.4) at its 183rd and 184th meetings on 25 April 1994 (CAT/C/SR.183 and 184), and has adopted the following conclusions and recommendations:

A. Introduction

160. Israel ratified the Convention on 3 October 1991 and made reservations on articles 20 and 30. It also did not make the declarations to accept the provisions of articles 21 and 22 of the Convention.

161. The initial report was filed in a timely fashion and was well supported by the oral presentation of the delegation, which was both focused and informative.

B. Positive aspects

162. The Committee notes the way in which public debate is allowed in Israel on such sensitive matters as ill-treatment of detainees, both in Israel and the occupied territories.

163. The Committee is pleased to acknowledge the way in which the Israeli Medical Association reacted to prevent its members from participating in ill-treatment of detainees by filling in the "medical fitness forms".

164. The Committee is pleased to note that the General Security Service and police are no longer responsible for reviewing complaints of ill-treatment of detainees by their own members, and that such function is now the responsibility of a special unit of the Ministry of Justice. The Committee is also pleased to note that Israel has prosecuted interrogators who have breached domestic standards of conduct and has disciplined others.

C. Subjects of concern

165. There is real concern that no legal steps have been taken to implement domestically the Convention against Torture. Thus, the Convention does not form part of the domestic law of Israel and its provisions cannot be invoked in Israeli courts.

166. The Committee regrets the clear failure to implement the definition of torture as contained in article 1 of the Convention.

167. It is a matter of deep concern that Israeli law pertaining to the defences of "superior orders" and "necessity" are in clear breach of that country's obligations under article 2 of the Convention.

168. The Landau Commission Report, permitting as it does "moderate physical pressure" as a lawful mode of interrogation, is completely unacceptable to this Committee:

(a) As for the most part creating conditions leading to the risk of torture or cruel, or inhuman or degrading treatment or punishment;

(b) By retaining in secret the crucial standards of interrogation to be applied in any case, such secrecy being a further condition leading inevitably to some cases of ill-treatment contrary to the Convention against Torture.

169. The Committee is greatly concerned at the large number of heavily documented cases of ill-treatment in custody that appear to amount to breaches of the Convention, including several cases resulting in death that have been drawn to the attention of the Committee and the world by such reputable non-governmental organizations as Amnesty International, Al Haq (the local branch of the International Commission of Jurists) and others.

D. Recommendations

170. The Committee recommends:

(a) That all the provisions of the Convention against Torture be incorporated by statute into the domestic law of Israel;

(b) That interrogation procedures be published in full so that they are both transparent and seen to be consistent with the standards of the Convention;

(c) That a vigorous programme of education and re-education of the General Security Service, the Israel Defence Forces, police and medical profession be undertaken to acquaint them with their obligations under the Convention;

(d) That an immediate end be put to current interrogation practices that are in breach of Israel's obligations under the Convention;

(e) That all victims of such practices should be granted access to appropriate rehabilitation and compensation measures.

171. Finally, the Committee expresses its wish to cooperate with Israel and it is sure that its recommendations will be properly taken into consideration.

V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

172. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to that end, to submit observations with regard to the information concerned.

173. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article/20, paragraph 1, of the Convention.

174. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

175. The Committee's work under article 20 of the Convention thus commenced at its fourth session and continued at its fifth to twelfth sessions. During those sessions the Committee devoted the following number of closed meetings or parts of meetings to its activities under that article:

Sessions	Number of closed meetings
Fourth	4
Fifth	4
Sixth	3
Seventh	2
Eighth	3
Ninth	3
Tenth	8
Eleventh	4
Twelfth	4

176. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed.

177. However, in accordance with article 20, paragraph 5, of the Convention, the Committee, at its 172nd meeting, on 19 November 1993, publicly announced that, after consultations with the State party concerned in April 1993, it had decided, on 9 November 1993, to include a summary account of the results of the proceedings relating to its inquiry on Turkey in its annual report to the States parties and to the General Assembly. 3/.

VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION

178. Under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to the Committee against Torture for consideration. Thirty-five out of 80 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider communications under article 22 of the Convention. Those States are: Algeria, Argentina, Australia, Austria, Bulgaria, Canada, Croatia, Cyprus, Denmark, Ecuador, Finland, France, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Slovenia, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Uruguay, Venezuela and Federal Republic of Yugoslavia (Serbia and Montenegro). No communication may be received by the Committee if it concerns a State party to the Convention that has not recognized the competence of the Committee to do so.

179. Consideration of communications under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22 (submissions from the parties and other working documents of the Committee) are confidential.

180. In carrying out its work under article 22 of the Convention, the Committee may be assisted by a working group of not more than five of its members, which submits recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications or assists it in any manner which the Committee may decide (rule 106 of the rules of procedure of the Committee).

181. A communication may not be declared admissible unless the State party has received the text of the communication and has been given an opportunity to furnish information or observations concerning the question of admissibility, including information relating to the exhaustion of domestic remedies (rule 108, para. 3). Within six months after the transmittal to the State party of a decision of the Committee declaring a communication admissible, the State party shall submit to the Committee written explanations or statements clarifying the matter under consideration and the remedy, if any, which has been taken by it (rule 110, para. 2).

182. The Committee concludes examination of an admissible communication by formulating its views thereon in the light of all information made available to it by the complainant and the State party. The views of the Committee are communicated to the parties (art. 22, para. 7, of the Convention and rule 111 of the rules of procedure of the Committee, para. 3) and are made available to the general public. Generally, the text of the Committee's decisions declaring communications inadmissible under article 22 of the Convention are also made public without disclosing the identity of the author of the communication, but identifying the State party concerned.

183. Pursuant to rule 112 of its rules of procedure, the Committee shall include in its annual report a summary of the communications examined. The Committee may also include in its annual report the text of its views under article 22, paragraph 7, of the Convention and the text of any decision declaring a communication inadmissible.

184. During the time covered by the present report (eleventh and twelfth sessions) the Committee had eight communications before it for consideration (Nos. 6/1990, 7/1990, 8/1991, 10/1993, 11/1993, 12/1993, 13/1993 and 14/1994).

185. At its eleventh session, the Committee adopted its Views in relation to communication No. 8/1991 (Halimi Nedzibi v. Austria), which had been declared admissible at the eighth session. The Committee found that the State party, by waiting 15 months before investigating the allegations of torture made by the author, had violated its duty to proceed to a prompt and impartial investigation, as required under article 12 of the Convention. The text of the Views is reproduced in annex V to the present report.

186. Also at its eleventh session, the Committee decided, pursuant to rule 109 of its rules of procedure, to set aside its decision declaring communication No. 6/1990 (I.U.P. v. Spain) inadmissible 4/, after a request to that effect had been received from the author during the Committee's ninth session. The Committee subsequently requested and received information from the State party relative to the admissibility of the communication, as well as from the author. On the basis of that information, the Committee, at its twelfth session, declared the communication admissible and requested the State party to provide information relative to the merits of the communication.

187. During its eleventh session, the Committee initiated consideration of communications Nos. 11/1993, 12/1993 and 13/1993. These three cases, although relating to different States parties, all concern allegations made under article 3 of the Convention. The authors claim that their ordered expulsion to their countries of origin would expose them to a danger of torture. The Committee decided to request the States parties concerned, pursuant to rule 108, paragraph 9, of its rules of procedure, not to expel the authors of the communications while their communications are under consideration by the Committee. To expedite the consideration of the communications, the Committee invited the States parties, in case they would have no objections to the admissibility of the communications, immediately to furnish information related to the merits of the complaint.

188. At its twelfth session, the Committee adopted its Views with regard to communication No. 13/1993 (Mutombo v. Switzerland). The Committee found that, in the specific circumstances of the author's case and in the light of the fact that there exists in Zaire a consistent pattern of gross, flagrant or mass violations of human rights, the expulsion of the author to Zaire would violate Switzerland's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The text of the Views is reproduced in annex V to the present report.

189. Also during its twelfth session, the Committee initiated consideration of communication No. 14/1994 and decided, under rule 108 of its rules of procedure, to request the State party to furnish information or observations relevant to the question of admissibility of the communication. At the same session, the Committee decided, at the request of the author, to discontinue consideration of communication No. 7/1990.

190. Pending receipt of further information and clarifications from the author and from the State party, no decision was taken in respect of communication No. 10/1993 at the sessions covered by the present report.

VII. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES

191. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly.

192. Since the Committee will hold its second regular session of each calendar year in November, which coincides with the regular sessions of the General Assembly, the Committee decided to adopt its annual report at the end of its spring session for appropriate transmission to the General Assembly during the same calendar year.

193. Accordingly, at its 189th meeting, held on 28 April 1994, the Committee considered the draft report on its activities at the eleventh and twelfth sessions (CAT/C/XII/CRP.1 and Add.1-8 and CAT/C/XII/CRP.2). The report, as amended in the course of the discussion, was adopted by the Committee unanimously. An account of the activities of the Committee at its thirteenth session (7 to 18 November 1994) will be included in the annual report of the Committee for 1995.

Notes

1/ Report of the World Conference on Human Rights, Vienna, 14-25 June 1993, (A/CONF.157/24 (Part I)), chap. III.

2/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 44 (A/45/44), paras. 14-16.

3/ Ibid., Forty-eighth Session, Addendum to Supplement No. 44 (A/48/44/Add.1).

4/ CAT/C/7/D/6/1990, dated 12 November 1991, reproduced in ibid., Forty-seventh Session, Supplement No. 44/A/47/44 (A/47/44), annex V.

Annex I

LIST OF STATES WHICH HAVE SIGNED, RATIFIED OR ACCEDED TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AS AT 28 APRIL 1994

State	Date of signature	Date of receipt of the instrument of ratification or accession
Afghanistan	4 February 1985	1 April 1987
Algeria a/	26 November 1985	12 September 1989
Antigua and Barbuda		19 July 1993 b/
Argentina a/	4 February 1985	24 September 1986
Armenia		13 September 1993 b/
Australia a/	10 December 1985	8 August 1989
Austria a/	14 March 1985	29 July 1987
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	
Belize		17 March 1986 b/
Benin		12 March 1992 b/
Bolivia	4 February 1985	
Bosnia and Herzegovina		6 March 1992 c/
Brazil	23 September 1985	28 September 1989
Bulgaria a/	10 June 1986	16 December 1986
Burundi		18 February 1993 b/
Cambodia		15 October 1992 b/
Cameroon		19 December 1986 b/
Canada a/	23 August 1985	24 June 1987
Cape Verde		4 June 1992 b/
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Costa Rica	4 February 1985	11 November 1993
Croatia a/		8 October 1991 c/
Cuba	27 January 1986	
Cyprus a/	9 October 1985	18 July 1991
Czech Republic		1 January 1993 c/
Denmark a/	4 February 1985	27 May 1987
Dominican Republic	4 February 1985	
Ecuador a/	4 February 1985	30 March 1988
Egypt		25 June 1986 b/
Estonia		21 October 1991 b/
Ethiopia		14 March 1994 b/
Finland a/	4 February 1985	30 August 1989

State	Date of signature	Date of receipt of the instrument of ratification or accession
France a/	4 February 1985	18 February 1986
Gabon	21 January 1986	
Gambia	23 October 1985	
Germany	13 October 1986	1 October 1990
Greece a/	4 February 1985	6 October 1988
Guatemala		5 January 1990 b/
Guinea	30 May 1986	10 October 1989
Guyana	25 January 1988	19 May 1988
Hungary a/	28 November 1986	15 April 1987
Iceland	4 February 1985	
Indonesia	23 October 1985	
Ireland	28 September 1992	
Israel	22 October 1986	3 October 1991
Italy a/	4 February 1985	12 January 1989
Jordan		13 November 1991 b/
Latvia		14 April 1992 b/
Libyan Arab Jamahiriya		16 May 1989 b/
Liechtenstein a/	27 June 1985	2 November 1990
Luxembourg a/	22 February 1985	29 September 1987
Malta a/		13 September 1990 b/
Mauritius		9 December 1992 b/
Mexico	18 March 1985	23 January 1986
Monaco a/		6 December 1991 b/
Morocco	8 January 1986	21 June 1993
Nepal		14 May 1991 b/
Netherlands a/	4 February 1985	21 December 1988
New Zealand a/	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Nigeria	28 July 1988	
Norway a/	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986 b/
Poland a/	13 January 1986	26 July 1989
Portugal a/	4 February 1985	9 February 1989
Romania		18 December 1990 b/
Russian Federation a/	10 December 1985	3 March 1987
Senegal	4 February 1985	21 August 1986
Seychelles		5 May 1992 b/

State	Date of signature	Date of receipt of the instrument of ratification or accession
Sierra Leone	18 March 1985	
Slovakia		29 May 1993 b/
Slovenia a/		16 July 1993 b/
Somalia		24 January 1990 b/
South Africa	29 January 1993	
Spain a/	4 February 1985	21 October 1987
Sri Lanka		3 January 1994 b/
Sudan	4 June 1986	
Sweden a/	4 February 1985	8 January 1986
Switzerland a/	4 February 1985	2 December 1986
Togo a/	25 March 1987	18 November 1987
Tunisia a/	26 August 1987	23 September 1988
Turkey a/	25 January 1988	2 August 1988
Uganda		3 November 1986 b/
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland d/	15 March 1985	8 December 1988
United States of America	18 April 1988	
Uruguay a/	4 February 1985	24 October 1986
Venezuela a/	15 February 1985	29 July 1991
Yemen		5 November 1991 b/
Yugoslavia a/	18 April 1989	10 September 1991

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a/ Made the declaration under articles 21 and 27 of the Convention.

b/ Accession.

c/ Succession.

d/ Made the declaration under article 21 of the Convention.

Annex II

MEMBERSHIP OF THE COMMITTEE AGAINST TORTURE

(1994-1995)

Name of member	Country of nationality	Term expires on 31 December
Mr. Hassib Ben Ammar	Tunisia	1995
Mr. Peter Thomas Burns	Canada	1995
Mr. Alexis Dipanda Mouelle	Cameroon	1997
Mr. Fawzi El Ibrashi	Egypt	1995
Mr. Ricardo Gil Lavedra	Argentina	1995
Mrs. Julia Iliopoulos-Strangas	Greece	1997
Mr. Hugo Lorenzo	Uruguay	1995
Mr. Mukunda Regmi	Nepal	1997
Mr. Bent Sørensen	Denmark	1997
Mr. Alexander M. Yakovlev	Russian Federation	1997

Annex III

STATUS OF SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION AS AT 28 APRIL 1994

A. Initial reports

Initial reports due in 1988 (27)

State party	Date of entry into force	Initial report date due	Date of Submission	Symbol
Afghanistan	26 June 1987	25 June 1988	21 January 1992	CAT/C/5/Add.31
Argentina	26 June 1987	25 June 1988	15 December 1988	CAT/C/5/Add.12/Rev.1
Austria	28 August 1987	27 August 1988	10 November 1988	CAT/C/5/Add.10
Belarus	26 June 1987	25 June 1988	11 January 1989	CAT/C/5/Add.14
Belize	26 June 1987	25 June 1988	18 April 1991	CAT/C/5/Add/25
Bulgaria	26 June 1987	25 June 1988	12 September 1991	CAT/C/5/Add.28
Cameroon	26 June 1987	25 June 1988	15/2/89 & 25/4/91	CAT/C/5/Add.16 & 26
Canada	24 July 1987	23 July 1988	16 January 1989	CAT/C/5/Add.15
Denmark	26 June 1987	25 June 1988	26 July 1988	CAT/C/5/Add.4
Egypt	26 June 1987	25 June 1988	26/7/88 & 20/11/90	CAT/C/5/Add.5 & 23
France	26 June 1987	25 June 1988	30 June 1988	CAT/C/5/Add.2
German Democratic Republic	9 October 1987	8 October 1988	19 December 1988	CAT/C/5/Add.13
Hungary	26 June 1987	25 June 1988	25 October 1988	CAT/C/5/Add.9
Luxembourg	29 October 1987	28 October 1988	15 October 1991	CAT/C/5/Add.9
Mexico	26 June 1987	25 June 1988	10/8/88 & 13/2/90	CAT/C/5/Add.7 & 22
Norway	26 June 1987	25 June 1988	21 July 1988	CAT/C/5/Add.3
Panama	23 September 1987	22 September 1988	28 January 1991	CAT/C/5/Add.24
Philippines	26 June 1987	25 June 1988	26/7/88 & 28/4/89	CAT/C/5/Add.6 & 18
Russian Federation	26 June 1987	25 June 1988	6 December 1988	CAT/C/5/Add.11
Senegal	26 June 1987	25 June 1988	30 October 1989	CAT/C/5/Add.19 (Replacing Add.8)
Spain	20 November 1987	19 November 1988	19 March 1990	CAT/C/5/Add.21
Sweden	26 June 1987	25 June 1988	23 June 1988	CAT/C/5/Add.1
Switzerland	26 June 1987	25 June 1988	14 April 1989	CAT/C/5/Add.1
Togo	18 December 1987	17 December 1988		
Uganda	26 June 1987	25 June 1988		
Ukraine	26 June 1987	25 June 1988	17 January 1990	CAT/C/5/Add.20
Uruguay	26 June 1987	25 June 1988	6/6/91 & 5/12/91	CAT/C/5/Add.27 & 30

Initial reports due in 1989 (10)

Chile	30 October 1988	29 October 1989	21/9/89 & 5/11/90	CAT/C/7/Add.2 & 9
China	3 November 1988	2 November 1989	1 December 1989	CAT/C/7/Add.5 & 14
Colombia	7 January 1988	6 January 1989	24/4/89 & 28/8/90	CAT/C/7/Add.1 & 10
Czech and Slovak Federal Republic	6 August 1988	5 August 1989	21/11/89 & 14/5/91	CAT/C/7/Add.4 & 12
Ecuador	29 April 1988	28 April 1989	27/6/90 & 28/2/91 & 26/9/91	CAT/C/7/Add.7, 11 & 13
Greece	5 November 1988	4 November 1989	8 August 1990	CAT/C/7/Add.8
Guyana	18 June 1988	17 June 1989		
Peru	6 August 1988	5 August 1989	9/11/92 & 22/2/94	CAT/C/7/Add.15 & 16
Tunisia	23 October 1988	22 October 1989	25 October 1989	CAT/C/7/Add.3
Turkey	1 September 1988	31 August 1989	24 April 1990	CAT/C/7/Add.6

Initial reports due in 1990 (11)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Algeria	12 October 1989	11 October 1990	13 February 1991	CAT/C/9/Add.5
Australia	7 September 1989	6 September 1990	27/8/91-11/6/92	CAT/C/9/Add.8 & 11
Brazil	28 October 1989	27 October 1990		
Finland	29 September 1989	28 September 1990	28 September 1990	CAT/C/9/Add.4
Guinea	9 November 1989	8 November 1990		
Italy	11 February 1989	10 February 1990	30 December 1991	CAT/C/9/Add.9
Libyan Arab Jamahiriya	15 June 1989	14 June 1990	14/5/91-27/8/92	CAT/C/9/Add.7 & 12/Rev.1
Netherlands	20 January 1989	19 January 1990	14/3-11/9-13/9/90	CAT/C/9/Add.1-3
Poland	25 August 1989	24 August 1990	22 March 1993	CAT/C/9/Add.13
Portugal	11 March 1989	10 March 1990	7 May 1993	CAT/C/9/Add.15
United Kingdom of Great Britain and Northern Ireland	7 January 1989	6 January 1990	22/3/91-30/4/92	CAT/C/9/Add.6, 10 & 14

Initial reports due in 1991 (7)

Germany	31 October 1990	30 October 1991	9 March 1992	CAT/C/12/Add.1
Guatemala	4 February 1990	3 February 1991		
Liechtenstein	2 December 1990	1 December 1991		
Malta	13 October 1990	12 October 1991		
New Zealand	9 January 1990	8 January 1991	29 July 1992	CAT/C/12/Add.2
Paraguay	11 April 1990	10 April 1991	13 January 1993	CAT/C/12/Add.3
Somalia	23 February 1990	22 February 1991		

Initial reports due in 1992 (10)

Croatia	8 October 1991	7 October 1992		
Cyprus	17 August 1991	16 August 1992	23 June 1993	CAT/C/16/Add.2
Estonia	20 November 1991	19 November 1992		
Israel	2 November 1991	1 November 1992	25 January 1994	CAT/C/16/Add.4
Jordan	13 December 1991	12 December 1992		
Nepal	13 June 1991	12 June 1992	6 October 1993	CAT/C/16/Add.3
Romania	17 January 1991	16 January 1992	14 February 1992	CAT/C/16/Add.1
Venezuela	28 August 1991	27 August 1992		
Yemen	5 December 1991	4 December 1992		
Yugoslavia (Serbia and Montenegro)	10 October 1991	9 October 1992		

Initial reports due in 1993 (8)

Benin	11 April 1992	10 April 1993		
Bosnia and Herzegovina	6 March 1992	5 March 1993		
Cambodia	14 November 1992	13 November 1993		
Cape Verde	4 July 1992	3 July 1993		
Czech Republic	1 January 1993	31 December 1993	18 April 1994	CAT/C/21/Add.2
Latvia	14 May 1992	13 May 1993		
Monaco	5 January 1992	4 January 1993	14 March 1994	CAT/C/21/Add.1
Seychelles	4 June 1992	3 June 1993		

State party	Date of entry into force	Initial report date due	Date of Submission	Symbol
Antigua and Barbuda	18 August 1993	17 August 1994		
Armenia	13 October 1993	12 October 1994		
Burundi	20 March 1993	19 March 1994		
Costa Rica	11 December 1993	10 December 1994		
Mauritius	8 January 1993	7 January 1994		
Morocco	21 July 1993	20 July 1994		
Slovakia	28 May 1993	27 May 1994		
Slovenia	15 August 1993	14 August 1994		

B. Second periodic reports*

Second periodic reports due in 1992 (26)

State party	First supplementary report date due	Date of submission	Symbol
Afghanistan	25 June 1992		
Argentina	25 June 1992	29 June 1992	CAT/C/17/Add.2
Austria	27 August 1992		
Belarus	25 June 1992	15 September 1992	CAT/C/17/Add.6
Belize	25 June 1992		
Bulgaria	25 June 1992		
Cameroon	25 June 1992		
Canada	23 July 1992	11 September 1992	CAT/C/17/Add.5
Denmark	25 June 1992		
Egypt	25 June 1992	13 April 1993	CAT/C/17/Add.11
France	25 June 1992		
Hungary	25 June 1992	23 September 1992	CAT/C/17/Add.8
Luxembourg	28 October 1992		
Mexico	25 June 1992	21 July 1992	CAT/C/17/Add.3
Norway	25 June 1992	25 June 1992	CAT/C/17/Add.1
Panama	22 September 1992	21 September 1992	CAT/C/17/Add.7
Philippines	25 June 1992		
Russian Federation	25 June 1992		
Senegal	25 June 1992		
Spain	19 November 1992	19 November 1992	CAT/C/17/Add.10
Sweden	25 June 1992	30 September 1992	CAT/C/17/Add.9
Switzerland	25 June 1992	28 September 1993	CAT/C/17/Add.12
Togo	17 December 1992		
Uganda	25 June 1992		
Ukraine	25 June 1992	31 August 1992	CAT/C/17/Add.4
Uruguay	25 June 1992		

* By decision of the Committee at its seventh and tenth sessions, those States parties which had not yet submitted their initial report due in 1988, namely Togo and Uganda, or in 1989, namely Guyana have been invited to submit both the initial and the second periodic reports in one document.

Second periodic reports due in 1993 (9)

State party	Second periodic report date due	Date of submission	Symbol
Chile	29 October 1993	16 February 1994	CAT/C/20/Add.3
China	2 November 1993		
Colombia	6 January 1993		
Ecuador	28 April 1993	21 April 1993	CAT/C/20/Add.1
Greece	4 November 1993	6 December 1993	CAT/C/20/Add.2
Guyana	17 June 1993		
Peru	5 August 1993		
Tunisia	22 October 1993		
Turkey	31 August 1993		

Second periodic reports due in 1994 (11)

Algeria	11 October 1994		
Australia	6 September 1994		
Brazil	27 October 1994		
Finland	28 September 1994		
Guinea	8 November 1994		
Italy	10 February 1994		
Libyan Arab Jamahiriya	14 June 1994		
Netherlands	19 January 1994	14 April 1994	CAT/C/25/Add.1
Poland	24 August 1994		
Portugal	10 March 1994		
United Kingdom of Great Britain and Northern Ireland	6 January 1994		

Annex IV

Country rapporteurs and alternate rapporteurs for each of the reports of States parties considered by the Committee at its eleventh and twelfth sessions

A. Eleventh session

Report	Rapporteur	Alternate
Cyprus: initial report (CAT/C/16/Add.2)	Mr. Burns	Mr. El Ibrashi
Ecuador: periodic report (CAT/C/20/Add.1)	Mr. Lorenzo	Mr. El Ibrashi
Egypt: periodic report (CAT/C/17/Add.11)	Mr. Dipanda Mouelle	Mr. Sørensen
Paraguay: initial report (CAT/C/12/Add.3)	Mr. Lorenzo	Mr. El Ibrashi
Poland: initial report (CAT/C/9/Add.13)	Mr. Mikhailov	Mr. Khitrin
Portugal: initial report (CAT/C/9/Add.15)	Mr. Ben Ammar	Mr. Voyame

B. Twelfth session

Greece: periodic report (CAT/C/20/Add.2)	Mr. El Ibrashi	Mr. Sørensen
Israel: initial report (CAT/C/16/Add.4)	Mr. Burns	Mr. Sørensen
Nepal: initial report (CAT/C/16/Add.3)	Mr. Burns	Mr. El Ibrashi
Switzerland: periodic report (CAT/C/17/Add.12)	Mr. Ben Ammar	Mr. Lorenzo

Annex V

Views of the Committee against Torture under article 22 of the Convention

A. Eleventh session

Communication No. 8/1991

Submitted by: Mr. Qani Halimi-Nedzibi [represented by counsel]

Alleged victim: The author

State party: Austria

Date of communication: 27 September 1991

Date of decision on admissibility: 5 May 1992

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 18 November 1993,

Having concluded its consideration of communication No. 8/1991, submitted to the Committee against Torture on behalf of Mr. Qani Halimi-Nedzibi under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and by the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is Qani Halimi-Nedzibi, a Yugoslav citizen, currently imprisoned in Austria. He claims to be a victim of a violation of articles 12 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Austria. He is represented by counsel.

The facts as submitted by the author

2.1 The author was arrested on 19 April 1988 and charged with drug-trafficking. The trial at first instance opened on 23 January 1989. He was convicted on 4 July 1990 of having been in charge of an international drug-trafficking organization which allegedly operated from Austria between November 1985 and December 1987. The court of first instance (Landesgericht für Strafsachen) sentenced him to 20 years' imprisonment, plus a fine of 2 million schillings, as well as a fine of 7 million schillings in place of the customs he failed to pay. On 4 July 1991, the Court of Appeal rejected the author's appeal against his conviction, but reduced the sentence of imprisonment to a term of 18 years.

2.2 The author alleges that following his arrest in 1988 he and six named witnesses were maltreated, beaten and tortured by police inspector J.J., who was in charge of the criminal investigation. They were allegedly coerced to make

incriminating statements. The author's wife, who was in her third or fourth month of pregnancy, had a miscarriage shortly after she had been interrogated by police inspector J.J. The police inspector allegedly also threatened to kill the author. The author raised these matters before the investigating judge on 5 December 1988. In particular, he stated: "I was pressured so long until I admitted that the drugs belonged to me. Inspector J.J. grabbed me by the hair and threw me against the wall; he also submerged my head in a bucket of water ... I suffered an eye injury which required hospital treatment."

2.3 During the trial at first instance, author's counsel requested all statements made to inspector J.J. to be ruled inadmissible as evidence. He referred to the declaration made by Austria when ratifying the Convention against Torture in July 1987, which reads: "Austria regards article 15 of the Convention as the legal basis for the inadmissibility provided therein of the use of statements which are established to have been made as a result of torture." The court, however, ruled against his motion.

2.4 The Court of Appeal rejected counsel's plea for nullity of the judgement in first instance, taking into consideration the Austrian legislation, the non-substantiation of the allegations of ill-treatment and the fact that the evidence given by the main witnesses remained unchallenged. The Court of Appeal decided that in the circumstances the question of direct applicability ("unmittelbare Anwendbarkeit") of the Convention against Torture did not arise.

Complaint

3. The author claims that the failure of the Austrian authorities promptly to investigate his allegations of torture and the refusal of the courts of first and second instance to exclude as evidence against him statements allegedly made by him and several witnesses as a result of torture constitute a violation of articles 12 and 15 of the Convention.

State party's observations and the author's comments thereon

4.1 The State party, by submission dated 27 February 1992, argued that the communication was inadmissible.

4.2 It submitted that criminal proceedings against Inspector J.J., initiated on 5 March 1990, following a complaint by the author, were still pending. The length of the investigations was attributable to the fact that difficulties had arisen in obtaining the testimonies of witnesses in the former Yugoslavia and Turkey. The State party indicated that, if Inspector J.J. would be found guilty of having ill-treated detainees in order to obtain incriminating statements, the author's case could be reopened. It argued that a retrial would constitute an effective remedy.

4.3 The State party further contended that the author could have appealed to the Constitutional Court under section 144 of the federal Constitution, as he claims to be a victim of abuse of administrative power and compulsion.

4.4 Since no appeal to the Constitutional Court had been submitted by the author and criminal proceedings against Mr. J.J. were still pending, the State party argued that the communication was inadmissible under article 22, paragraph 5 (b), of the Convention, on the ground of non-exhaustion of domestic remedies.

4.5 The State party moreover argued that the communication was inadmissible as incompatible with the provisions of the Convention. It submitted that the allegations that the witnesses had been tortured were not raised before the investigating judge, but only during the trial, after the witnesses were confronted with their statements; prior to these allegations the statements were properly deemed to be admissible evidence. Moreover, the State party argued that the witnesses gave independent, admissible evidence before the investigating judge. The State party stated that only one witness disputed the correctness of the statement made to the police; however, his statement did not incriminate the author. The correctness of other statements was not in dispute.

4.6 As concerns the author, the State party conceded that he claimed before the investigating judge to have been subjected to torture; however, according to the State party, he denied the charges against him and did not make a confession as such; thus it cannot be said that his statements were used as evidence in violation of article 15.

4.7 Finally, the State party submitted that it appears from the trial record that the jury's verdict was not based on the statements made by the witnesses who had claimed to have been subjected to torture.

5.1 In his comments on the State party's submission, counsel maintained that the communication should be declared admissible.

5.2 As regards the exhaustion of domestic remedies, counsel submitted that it was incomprehensible that the criminal proceedings against Inspector J.J. had not yet been concluded. He contended that the proceedings were unreasonably prolonged and indicated that the delay appeared to be attributable to the fact that the State party had joined the author's case with other pending matters against Inspector J.J. Thus, the difficulties in obtaining the testimony of witnesses in the former Yugoslavia and Turkey, concerning another investigation, were postponing the investigation of the author's allegations. He contended furthermore that the courts had failed to examine the allegations of torture in a timely fashion, during the criminal proceedings against the author.

5.3 Concerning the possibility of an appeal to the Constitutional Court under section 144 of the Federal Constitution, counsel argued that this appeal was not available to the author, as this procedure applies to administrative, not to criminal law. Moreover, counsel argued that, even if this appeal were available, it would not constitute an effective remedy, as criminal courts are not bound by the evaluation of evidence in the Constitutional Court.

5.4 Concerning the State party's contention that article 15 of the Convention had not been violated, counsel submitted that it is not clear from the text of article 15 how it should be established that a statement is made as a result of torture. He argued that it is sufficient that the author adduces some evidence indicating that a statement was given as a result of torture. In this connection, he referred to the difficulty for a victim to prove that he has been subjected to torture, owing to the isolation in detention and the absence of independent witnesses during interrogation. He further stated that article 15 applies to "any statement", not only to confessions or false statements, as the State party seemed to imply. He finally argued that it could not be said that the author's allegations were examined by the jury during his trial, as Inspector J.J. was not questioned on the issue, nor confronted with witnesses.

Committee's admissibility decision

6.1 At its eighth session, the Committee considered the admissibility of the communication. It ascertained that the same matter had not been or was not being examined under another procedure of international investigation or settlement, and that a case concerning the author which was pending before the European Commission of Human Rights concerned a different matter.

6.2 The Committee further considered that article 22, paragraph 5 (b), of the Convention did not, in the circumstances of the case, preclude the Committee from considering the communication on the merits. In this context, the Committee considered that there had been an unreasonable delay in the conduct of investigations into the author's allegations of torture, which were made in December 1988, and that no further effective remedies appeared to be available.

7. On 5 May 1992, the Committee therefore declared the communication admissible. It noted that the facts as presented by the author might raise issues under articles 12 and 15 and also under other provisions of the Convention.

State party's submissions on the merits and the author's comments

8.1 The State party, on 10 November 1992 and 4 January 1993, reiterates that the author made his complaint of ill-treatment months after its alleged occurrence. It submits that the author has suffered from eye trouble since childhood and that the medical records show that he complained about his left eye for the first time on 16 September 1988. As a result of examinations by the prison doctor on 14 November 1988, aphykia (the absence of the lens of the eye) and ablatio retinae (detachment of the retina) were found. Subsequently, after examinations at the Vienna Eye Hospital it was concluded that the autnor's left eye was blind. The State party forwarded a copy of the medical record in the author's case.

8.2 With regard to the investigations into the author's allegations, the State party states that the criminal proceedings against Inspector J.J. and a colleague were halted by the Prosecutor's office on 6 November 1992, on the ground that following preliminary investigations the allegations were found to be totally unsubstantiated. At the preliminary hearing, the interpreter who had been present during the interrogations testified that the conduct by the police officers had been correct and that she had never witnessed any acts of torture. Only two witnesses, both co-defendants of the author, claimed to have been given one or two blows by Inspector J.J. All other witnesses gave exonerating evidence. No medical evidence was available to substantiate the allegations.

9.1 In his comments on the State party's submissions, counsel maintains his claim that the author's eye injury was caused by Inspector J.J. at the end of June or the beginning of July 1988, when the author was hit with a pistol and his head was banged against a table.

9.2 Counsel further claims that some witnesses, who could have corroborated the author's allegations, were not called by the Prosecutor during the preliminary investigations against Inspector J.J. Among these persons is the author's wife, who no longer lives in Austria.

10. On 26 April 1993, the Committee decided to request the State party to appoint, in consultation with the author's counsel, an independent expert in ophthalmology in order to determine the date of and the origin of the eye

injury. It further referred to article 12 of the Convention and requested the State party to submit written explanations clarifying the delay in initiating the investigation of the author's allegations.

11.1 On 27 July 1993, the State party forwarded to the Committee an expert opinion prepared by an ophthalmologist. His report shows that the author's eye was already blind in March 1989, when he was first examined at the Eye Hospital, as a result of an old retinal detachment and that it had begun to show the first signs of an external squint. The State party concludes that the eye must have gone blind before 1988, since a blind eye does not begin to squint until after a long period of blindness.

11.2 The State party recalls that the author was arrested on 19 April 1988 on the suspicion of being involved in internationally organized heroin trafficking. On 5 December 1988, the author for the first time claimed to have been subjected to torture and threatened by Inspector J.J. Neither the Journalrichter nor the investigating judge had observed any signs of ill-treatment. The author repeated his allegations in a number of written submissions to the Public Prosecutor, the Attorney General and the Minister of Justice. Police Inspector J.J. and one of his colleagues were questioned on these charges by the investigating judge on 16 February 1989; they rejected the accusations made against them.

11.3 The State party submits that, since no signs of an injury could be established and the police officers denied the charges, no strong suspicion existed that an act of torture had been committed. It was therefore decided that the criminal proceedings against the author could proceed. During the trial against the author, from 8 to 11 January 1990, witnesses testified that they had been ill-treated by Inspector J.J. and his colleague. As a result, preliminary investigations against the two policemen were instituted on 5 March 1990.

12. In his comments on the State party's submission, dated 21 October 1993, counsel submits that the State party had not consulted him about the choice of the medical expert. He further states that the expert's report does not necessarily exclude the author's version of events. He emphasizes that the author received medical treatment in prison after having been ill-treated but that the records of this treatment were not kept.

Examination of the merits

13.1 The Committee has considered the communication in the light of all information made available to it by the parties, as required under article 22, paragraph 4, of the Convention.

13.2 The Committee notes that the author has claimed that he was ill-treated after his arrest and that as a consequence he suffered an eye-injury. The State party has denied the alleged ill-treatment and has claimed that the author's eye-injury dates from childhood. It has submitted an expert report, in which it is concluded that the author's left eye, with almost absolute certainty ("mit an Sicherheit grenzender Wahrscheinlichkeit") had been completely blind already in 1988, owing to retinal detachment.

13.3 The Committee observes that the competence, independence and conclusions of the specialist in ophthalmology have not been challenged. While noting with regret that the State party failed to consult with the author's counsel before

appointing the specialist, as the Committee had requested in its decision of 26 April 1993, due weight must be given to his conclusions.

13.4 On the basis of the information before it, the Committee cannot conclude that the allegations of ill-treatment have been sustained. In the circumstances, the Committee finds no violation of article 15 of the Convention.

13.5 It remains to be determined whether the State party complied with its duty to proceed to a prompt and impartial investigation of the author's allegations that he had been subjected to torture, as provided in article 12 of the Convention. The Committee notes that the author made his allegations before the investigating judge on 5 December 1988. Although the investigating judge questioned the police officers about the allegations on 16 February 1989, no investigation took place until 5 March 1990, when criminal proceedings against the police officers were instituted. The Committee considers that a delay of 15 months before an investigation of allegations of torture is initiated, is unreasonably long and not in compliance with the requirement of article 12 of the Convention.

14. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts before it disclose a violation of article 12 of the Convention.

15. The State party is requested to ensure that similar violations do not occur in the future.

16. Pursuant to rule 111, paragraph 5, of its rules of procedure, the Committee wishes to receive information, within 90 days, on any relevant measures taken by the State party in conformity with the Committee's Views.

[Adopted in English, French, Russian and Spanish, the English text being the original version.]

B. Twelfth session

Communication No. 13/1993

Submitted by: Mr. Balabou Mutombo [represented by counsel]

Alleged victim: The author

State party concerned: Switzerland

Date of communication: 18 November 1993

Date of decision: 27 April 1994

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 27 April 1994,

Having concluded its consideration of communication No. 13/1993, submitted to the Committee against Torture on behalf of Mr. Balabou Mutombo under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, and by the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication (dated 18 October 1993) is Balabou Mutombo, a Zairian citizen, born on 24 November 1961, at present living in Switzerland and seeking recognition as a refugee. He claims to be a victim of a violation by Switzerland of article 3 of the Convention against Torture. He is represented by counsel.

Facts as submitted by the author

2.1 The author states that he has been a member of the Zairian Armed Forces since 1982. In 1988, he clandestinely became a member of the political movement Union pour la démocratie et le progrès social (UDPS), as he felt discriminated against because of his ethnic background (Luba). His father had been a member of the movement since its launch in 1982 and was allegedly forced to retire as a magistrate at the Kinshasa Magistrate's Court (Tribunal de Grande Instance) because of that affiliation. The author participated in several demonstrations and attended illegal meetings.

2.2 On 20 June 1989, the author was arrested by three members of the Division Spéciale Présidentielle, when he was about to deliver a letter from his father to Mr. Etienne Tshisekedi, a founding member and leader of UDPS. He was detained in the military camp of Tshatsi, where he was locked up in a cell of one square metre. During the four days that followed, he was tortured by his interrogators, whom he mentions by name. He was subjected to electric shocks, beaten with a rifle, and his testicles were bruised until he lost consciousness. On 24 June 1989, he was brought before a military tribunal, found guilty of conspiracy against the State and sentenced to 15 years' imprisonment. He was transferred to the military prison of Ndolo, where he was detained for seven months. Although the author had lost part of his eyesight and suffered a head injury caused by the torture, he was not given any medical treatment. On 20 January 1990, he was released under the condition that he present himself twice a week at the Auditorat militaire of Mantete. In February 1990, he sought medical treatment for his eye injury at the General Hospital Mama Yemo.

2.3 Subsequently, the author's father and brothers suggested that he leave Kinshasa, to avoid the police finding other members of the movement by following him. They also feared for the author's security. On 30 March 1990, the author left Zaire, leaving behind his family, including his two children, who live with his father; after 15 days he arrived at Luanda, where he stayed with friends for three months. A friend provided him with a visa for Italy, where he arrived on 29 July 1990, using the passport of his friend. On 7 August 1990, he illegally crossed the border to enter Switzerland; on 8 August 1990, he applied for recognition in Switzerland as a refugee. In the course of that month he learned that his father had been detained after his departure.

2.4 The author was heard by the Cantonal Office for Asylum Seekers at Lausanne on 10 October 1990. He submitted a medical report written by a medical doctor

in Switzerland indicating that the scars on his body corresponded with the alleged torture. A report by an ophthalmologist indicated that the author had an eye injury, caused by a trauma, which, according to the author, was caused by a blow to his head during the interrogation in June 1989. On 31 January 1992, the Federal Refugee Office (Office fédéral des réfugiés) rejected his application and ordered his removal from Switzerland. It considered that, even if the author had been detained in the military prison of Ndolo, it was unlikely that he had been imprisoned for political reasons, since the International Committee of the Red Cross (ICRC), which had visited the prison in November 1989, had stated that it did not visit him, since he apparently did not belong to the category of prisoners which fell under the mandate of ICRC. The Refugee Office further doubted the authenticity of the provisional release order, which the author had submitted as evidence of his detention. With regard to the author's return to Zaire, the Refugee Office considered that there were no indications that he would be exposed to punishment or treatment prohibited by article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2.5 On 6 March 1992, the author appealed the decision. On 10 August 1992, the decision to expel him was stayed, but on 2 June 1993, the Commission of Appeal in Refugee Matters (Commission suisse de recours en matière d'asile) dismissed the author's appeal. On 24 June 1993, the author was informed that he had to leave Switzerland before 15 September 1993, failing which he would be subject to expulsion. The author's request for a review of the decision, on the ground that the authorities had not sufficiently taken into account essential documents, such as a report of Amnesty International and medical reports, was dismissed on 13 September 1993. On 17 September 1993, the author received permission to stay in Switzerland until 17 October 1993.

Complaint

3.1 The author claims that a real risk exists that he would be subjected to torture or that his security would be endangered if he were to be returned to his country. It is submitted that evidence exists that there is a consistent pattern of gross and massive violations of human rights in Zaire, which, according to article 3, paragraph 2, of the Convention against Torture, are circumstances which a State party should take into account when deciding on expulsion. The author contends that on this basis alone the Swiss authorities should refrain from expelling him.

3.2 In a letter to counsel, dated 3 November 1993, Amnesty International supports the author's arguments that he would be exposed to a risk of torture upon return to Zaire. It considers the author's story credible and emphasizes that the general situation in Zaire is one of violence and repression. Amnesty International submits in particular that hundreds of soldiers suspected of sympathizing with the opposition to the rule of President Mobuto have been arrested and many of them are detained in secret places. In Amnesty International's opinion, members of the opposition are subject to repression and the simple fact of seeking recognition as a refugee is seen as a subversive act.

3.3 Since the author could be expelled at any moment, he asked the Committee to request Switzerland to take interim measures of protection and not to expel him while his communication is under consideration by the Committee.

Issues and proceedings before the Committee

4. During its eleventh session, on 18 November 1993, the Committee decided to solicit from the State party clarifications or observations as to the admissibility of the communication, and, in the specific circumstances of the case, to request the State party, under rule 108, paragraph 9, not to expel the author while his communication was under consideration by the Committee. The State party was also invited to submit explanations or statements as to the merits of the communication, in case it had no objections to its admissibility.

5. On 18 February 1994, the State party informed the Committee that it would comply with the Committee's request not to expel the author and that it would not contest the admissibility of the communication, since the author had exhausted all available domestic remedies.

State party's observations on the merits of the communication

6.1 By submission of 7 March 1994, the State party recalls that the Federal Refugee Office has, on 31 January 1992, rejected the author's application to be recognized as a refugee, on the basis that there were several contradictions in his testimony, that the principal document, the provisional release order, had no legal value, that the medical certificates were not persuasive and that in general the author's allegations were not reliable. The Federal Refugee Office was of the opinion that the situation in Zaire was not one of systematic violence.

6.2 As to the author's specific claim that his expulsion would be in violation of article 3 of the Convention, the State party notes that the author has not raised this objection before any of the national authorities, but has only invoked article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The State party refers to the author's argument that the existence in a State of a consistent pattern of human rights violations would by itself be sufficient reason not to return anyone to that State. The State party considers the issue raised by the author of great importance for the interpretation and application of article 3 of the Convention; it points out that, if the general situation in a country alone would suffice to conclude that substantial grounds exist for believing that someone, if returned, would be subjected to torture, the requirement of article 3, paragraph 1, that the belief concerns the individual personally, would no longer have a separate meaning. The State party concludes therefore that the interpretation as suggested by the author is incompatible with article 3 and with a systematic and teleological interpretation thereof. It submits that article 3, paragraph 1, stipulates the conditions in which a State party is precluded from expelling an individual from its territory, whereas paragraph 2 prescribes how to appreciate the evidence when determining the existence of such conditions.

6.3 The State party submits that, even if a consistent pattern of gross, flagrant or mass violations of human rights exists in a country, this should only be taken as an indication when examining all the circumstances to determine whether the person to be returned would be in concrete danger of being tortured. The existence of the "substantial grounds" of paragraph 1 has to be determined in the light of all the circumstances in a particular case. The State party argues that only in exceptional circumstances would a reference to a situation of gross violations of human rights suffice to prove the existence of substantial grounds to believe that a person would be in danger of being subjected to torture, for instance if the violations are directed against a particular group of persons in a confined territory and the individual to be

returned belongs to that group. The State party submits that this is not the case with the author of the present communication.

6.4 In support of its interpretation of article 3 of the Convention, the State party refers to the jurisprudence of the European Commission of Human Rights, establishing that a decision to expel an asylum seeker may give rise to an issue under article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms where substantial grounds have been shown for believing that he faces a real risk of being subjected tc torture. In the Commission's opinion, a reference to the general situation in a country is not sufficient to preclude the return of an individual, as it must be shown that the individual himself is at risk. The State party further refers to the decision of the European Court of Human Rights in Vilvarajah et al. v. The United Kingdom, where it was held that a mere possibility of ill-treatment because of the general situation in a country was not in itself sufficient to give rise to a violation of article 3. The State party argues that article 3 of the Convention against Torture does not provide a wider protection than article 3 of the European Convention. It adds that the author himself is apparently of the same opinion, since he did not deem it necessary to invoke article 3 of the Convention against Torture while exhausting his domestic remedies, but only invoked article 3 of the European Convention.

6.5 The State party submits that the author of the present communication does not have substantial grounds to believe that he himself would be in danger of being subjected to torture in case of his return to Zaire. Even taking into account the general situation in Zaire, the State party claims that the evidence adduced by the author does not support his allegations. In this context, the State party submits that it has, on several occasions, contacted its embassy at Kinshasa before taking its decision not to grant the author asylum. The embassy contacted an informant from the human rights movement in Zaire, who advised the embassy that the author's story was highly unlikely. He affirmed that the provisional release order was a document without any legal value and that all released prisoners were provided with a "fiche de libération", which the author did not possess. Moreover, the signature on the order produced by the author does not correspond with the signature of the director of the military prison in which the author allegedly was detained. The State party further submits that the author's name does not figure in the Ndolo prison registers for 1989 and 1990 and that the author's father has declared that his son has never been detained in a military prison. It is also submitted that the drawing made by the author of the prison lacks important elements such as the desk of the prison's director and the division of the prison in two parts, one for ordinary soldiers and one for officers.

6.6 As regards the author's father, it was found that he had retired, not for political reasons, but pursuant to the applicable rules for civil servants. The leaders of the UDPS subsection to which the author's father geographically belongs have stated that he was not a UDPS member.

6.7 Moreover, the State party argues that, even if the author's story is true, it still does not indicate that a real risk exists that he will be subjected to torture upon his return. The State party argues that the fact that the author was provisionally released after seven months, while having been sentenced to 15 years' imprisonment, shows that such a risk is minimal, even if he was subjected to torture after his arrest in 1989. The State party recalls that the author has admitted having received a new military uniform upon his release. The State party further refers to the author's communication to the Committee, and

concludes that he left Zaire mainly because he did not want to endanger his family and friends, not because he was personally at risk.

6.8 As regards the general situation in Zaire, the State party acknowledges that the country suffers from internal political unrest and from incidental outbursts of violence. However, it submits that this cannot lead to the conclusion that a personal risk exists for the author that he will be tortured after his return. In this context, the State party refers to a recent letter from the Office of the United Nations High Commissioner for Refugees, in which it expressed concern for the situation in Zaire and recommended great prudence in the return of persons to Zaire, but did not recommend a suspension of expulsions to Zaire altogether.

7.1 In his comments (dated 20 April 1994) on the State party's submission, counsel argues that, even if Mr. Mutombo did not invoke the Convention against Torture but only the European Convention for the Protection of Human Rights and Fundamental Freedoms before the national authorities, the Swiss authorities were, according to the Swiss legal system, nevertheless under an obligation to apply the Convention against Torture. Counsel further contests the State party's argument that article 3 of the Convention against Torture does not provide a wider protection than article 3 of the European Convention. He argues that the articles of the Convention against Torture must be interpreted in such a way as to give the most effective protection against torture. In this context, counsel notes that article 3 of the European Convention prohibits torture but does not directly deal with the issue of expulsion or "refoulement". Its application to situations of expulsion has been developed only in the jurisprudence of the European Commission and the European Court on Human Rights, which have been reluctant to interpret it broadly. Since article 3 of the Convention against Torture contains an explicit protection against forced return to a country where an individual would be at risk of being subjected to torture, counsel argues that this necessarily has to lead to a different, wider interpretation.

7.2 Counsel further argues that the criteria to establish the existence of a risk that an individual, if returned, would be subjected to torture are not the same under the two conventions. The jurisprudence on the basis of article 3 of the European Convention has established that a risk must be concrete and serious to engage the applicability of article 3. Under article 3 of the Convention against Torture the existence of substantial grounds for believing that such risk exists is sufficient to prohibit the individual's return; among these grounds is the existence in the country concerned of a consistent pattern of gross, flagrant or mass violations of human rights. Counsel contests the State party's interpretation of the second paragraph of article 3, and argues that the existence of systematic human rights violations in a country sufficiently shows the existence of substantial grounds for believing that a person would be in danger of being subjected to torture, on the basis of which the person's return to that country is prohibited.

7.3 Counsel further argues that article 3 of the Convention against Torture lays the burden of proof on the State party, thereby reinforcing the protection of the individual. In this connection, counsel notes that it is difficult for an individual to prove the existence of the danger of being subjected to torture. As regards the State party's contention that Mr. Mutombo's story is not credible, and its investigation to adduce evidence to that effect, counsel notes that the secretive nature of the investigation and the use of an anonymous informant makes it impossible for him to verify the credibility and the objectivity of the information furnished. Counsel

furthermore doubts that the informant would have had access to the register of the Ndolo prison, which normally would not be open to anyone from the outside. He therefore requests that the State party disclose the name of the informant and the name of the human rights movement of which he is a member, failing which the information provided by the State party should not be taken into account by the Committee. To substantiate the credibility of the author's story, counsel refers to the initial communication and the position taken by Amnesty International in support of it.

7.4 Counsel further argues that the fact that the author was conditionally released from detention does not diminish the risk of being subjected to torture upon return to the country. In this connection, counsel points out that the situation in Zaire has considerably deteriorated since 1990 and that it is the present danger facing the author upon his return to Zaire which is at issue. To support his argument, counsel refers to several reports written by non-governmental organizations and to the report concerning Zaire prepared by the Secretary-General for the United Nations Commission on Human Rights, a/ which indicate that torture and ill-treatment of detainees are common practice in Zaire and are perpetrated with impunity. Counsel argues that the State party's reference to the failure of the United Nations High Commissioner for Refugees to recommend the suspension of all expulsions to Zaire is irrelevant, because this was related to another case and had nothing to do with the author's situation. Counsel further states that the language used in the letter from the High Commissioner is strongly dissuasive of all expulsions to Zaire.

7.5 Finally, counsel refers to the medical report submitted by the author and written by a Swiss medical specialist, indicating that the author's injuries correspond with the alleged torture. He notes that the State party has rejected this report as not persuasive without even conducting a re-examination.

Decision on admissibility and examination of the merits

8. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 25, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party has not raised any objections to the admissibility of the communication and that it has confirmed that the author has exhausted all available domestic remedies. The Committee therefore finds that no obstacles to the admissibility of the present communication exist and proceeds with the consideration of the merits of the communication.

9.1 The Committee observes that it is not called upon to determine whether the author's rights under the Convention have been violated by Zaire, which is not a State party to the Convention. The issue before the Committee is whether the expulsion or return of the author of the communication to Zaire would violate the obligation of Switzerland under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

9.2 The Committee is aware of the concerns of the State party that the implementation of article 3 of the Convention might be abused by asylum seekers. The Committee considers that, even if there are doubts about the facts adduced by the author, it must ensure that his security is not endangered.

9.3 The relevant provisions are contained in article 3:

> "1. No State party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
>
> "2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that Mr. Mutombo would be in danger of being subjected to torture. In reaching this conclusion, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his specific circumstances.

9.4 The Committee considers that in the present case substantial grounds exist for believing that the author would be in danger of being subjected to torture. The Committee has noted the author's ethnic background, alleged political affiliation and detention history as well as the fact, which has not been disputed by the State party, that he appears to have deserted from the army and to have left Zaire in a clandestine manner and, when formulating an application for asylum, to have adduced arguments which may be considered defamatory towards Zaire. The Committee considers that, in the present circumstances, his return to Zaire would have the foreseeable and necessary consequence of exposing him to a real risk of being detained and tortured. Moreover, the belief that "substantial grounds" exist within the meaning of article 3, paragraph 1, is strengthened by "the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights", within the meaning of article 3, paragraph 2.

9.5 The Committee is aware of the serious human rights situation in Zaire, as reported, inter alia, to the United Nations Commission on Human Rights by the Secretary-General a/ and by the Commission's Special Rapporteur on extrajudicial, summary or arbitrary executions, b/ the Special Rapporteur on the question of torture c/ and the Working Group on Enforced or Involuntary Disappearances. d/ The Committee notes the serious concern expressed by the Commission in this regard, in particular in respect of the persistent practices of arbitrary arrest and detention, torture and inhuman treatment in detention centres, disappearances and summary and arbitrary executions, which prompted the Commission to decide, in March 1994, to appoint a special rapporteur specifically to examine and to report on the human rights situation in Zaire. The Committee cannot but conclude that a consistent pattern of gross, flagrant or mass violations does exist in Zaire and that the situation may be deteriorating.

9.6 Moreover, the Committee considers that, in view of the fact that Zaire is not a party to the Convention, the author would be in danger, in the event of expulsion to Zaire, not only of being subjected to torture but of no longer having the legal possibility of applying to the Committee for protection.

9.7 The Committee therefore concludes that the expulsion or return of the author to Zaire in the prevailing circumstances would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from expelling Balabou Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.

Notes

a/ E/CN.4/1994/49.

b/ E/CN.4/1994/7, paras. 653-662.

c/ E/CN.4/1994/31, paras. 657-664.

d/ E/CN.4/1994/26, paras. 509-513.

Annex VI

LIST OF DOCUMENTS ISSUED FOR THE COMMITTEE DURING THE REPORTING PERIOD

A. Eleventh session

Symbol	Title
CAT/C/9/Add.13	Initial report of Poland
CAT/C/9/Add.14	Additional information of the United Kingdom on its dependent territories
CAT/C/9/Add.15	Initial report of Portugal
CAT/C/16/Rev.1	Revised note by the Secretary-General listing initial reports due in 1992
CAT/C/16/Add.2	Initial report of Cyprus
CAT/C/17/Add.11	Second periodic report of Egypt
CAT/C/20/Rev.1	Revised note by the Secretary-General listing second period reports due in 1993
CAT/C/20/Add.1	Second periodic report of Ecuador
CAT/C/21/Rev.1	Revised note by the Secretary-General listing initial reports due in 1993
CAT/C/23	Provisional agenda and annotations
CAT/C/SR.154-172	Summary records of the eleventh session of the Committee

B. Twelfth session

CAT/C/2/Rev.3	Revised note by the Secretary-General on the status of the Convention and reservations, declarations and objections under the Convention
CAT/C/16/Add.3	Initial report of Nepal
CAT/C/16/Add.4	Initial report of Israel
CAT/C/17/Add.12	Second periodic report of Switzerland
CAT/C/20/Add.2	Second periodic report of Greece
CAT/C/20/Add.3	Second periodic report of Chile
CAT/C/24	Note by the Secretary-General listing initial reports due in 1994

Symbol	Title
CAT/C/25	Note by the Secretary-General listing second periodic reports that are due in 1994
CAT/C/26	Provisional agenda and annotations
CAT/C/SR.173-189	Summary records of the twelfth session of the Committee